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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re SAVANNAH H., a Person Coming
Under the Juvenile Court Law.

B235326

(Los Angeles County
Super. Ct. No. CK80322)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.O.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth Kim, Juvenile Court Referee. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

L.O. (Mother), the mother of two-year-old Savannah H., appeals from the juvenile court's order terminating her parental rights pursuant to Welfare and Institutions Code section 366.26,¹ contending only that the court erred and reversal is required because notice was not sent to the Bureau of Indian Affairs pursuant to the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)) after Savannah's father, U.H. (Father), said he may have Native American ancestry. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Detention, Removal and Termination of Parental Rights

On December 9, 2009 the Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition in the juvenile court alleging both Mother and Savannah had tested positive for cocaine at the time of Savannah's recent birth, Mother had a history of substance abuse and was still a user of cocaine and marijuana and, as a result, Savannah was at risk of physical harm and emotional damage. The petition also alleged Father was incarcerated and had failed to provide Savannah with the necessities of life. The court ordered Savannah detained from Mother and scheduled an arraignment hearing for Father for December 15, 2009. Father appeared, was arraigned on that date and found to be Savannah's presumed father. The matter was continued for a contested jurisdiction/disposition hearing.

Following the jurisdiction and disposition hearings, the juvenile court found Savannah to be a child described in section 300, subdivisions (b) (failure to protect) and (g) (no provision for support), declared her a dependent child of the court and ordered her removed from the custody of her parents. Family reunification services were ordered for both Mother and Father. By March 2011, following a brief period of reunification with Father and re-detention by the Department, reunification services were terminated for both parents. On August 1, 2011 the court ordered parental rights terminated pursuant to section 366.26.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2. Proceedings Relating to ICWA

The section 300 petition filed December 9, 2009 included the Indian Child Inquiry Attachment, Judicial Council form ICWA-010(A), on which the Department reported Mother had stated she had no known Native American ancestry. At the arraignment hearing for Father on December 15, 2009, Father completed the Parental Notification of Indian Status, Judicial Council form ICWA-020, on which he checked the box indicating “I may have Indian ancestry.” No other information about possible Native American ancestry was provided by Father on this form.²

Based on Father’s suggestion he may have Native American ancestry, the following exchange took place at the arraignment hearing:

“[The Court]: The court is in receipt of [the] document entitled Parental Notification of Indian Status in which [Father] indicates that he may have Indian ancestry. Sir, what federally recognized tribe do you believe you may be eligible for enrollment in? Do you know the name of the tribe?

“[Father]: No, Ma’am.

“[Father’s counsel]: He indicates his parents may have more information.

“[The Court]: Sir, do you know if you or members of your family or your child are enrolled or registered with a tribe?

“[Father]: Not that I know of, no.

“[The Court]: Do you know whether your child is eligible for enrollment or membership or registration?

“[Father]: No.

“[The Court]: Are your parents or your grandparents members of a tribe?

“[Father]: No, not that I know of.

“[The Court]: And do you or any members of your family receive tribal benefits?

“[Father]: No, not that I know of.

² Mother also completed the Parental Notification of Indian Status, Judicial Council form ICWA-020, once again confirming she did not have any Native American ancestry.

“[The Court]: All right. The court at this time will make a finding that at this point there is no reason to know that this child would fall under the Indian Child Welfare Act; however, the Department is ordered to contact the party claiming possible American Indian heritage [to] investigate that claim. The social worker is to provide to this court [a] supplemental report regarding that investigation. . . . The court will then determine whether the information triggers notice requirements.”

On January 5, 2010 the Department filed a first amended section 300 petition, which added a count concerning Father’s criminal history and included another Indian Child Inquiry Attachment, Judicial Council form ICWA-010(A). That form reported Mother had been interviewed in person on December 21, 2009 and Father had been interviewed in person (at Pitchess Detention Center) on December 29, 2009, and both parents stated they had “no American Indian heritage.” The form was signed by the dependency investigator assigned to the case. The court did not thereafter reconsider its prior finding regarding the inapplicability of ICWA.

DISCUSSION

1. Governing Law

The purpose of ICWA is to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” (*In re Karla C.* (2003) 113 Cal.App.4th 166, 173-174, quoting 25 U.S.C. § 1902; see also *In re Suzanna L.* (2002) 104 Cal.App.4th 223, 229; *In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1299.) “ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource.” (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) For purposes of ICWA, an “Indian child” is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4).)

ICWA provides, “In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking foster

care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe" of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a); see *In re S.B.* (2005) 130 Cal.App.4th 1148, 1157.) Similarly, California law requires notice to the Indian custodian and the Indian child's tribe in accordance with section 224.2, subdivision (a)(5), if the Department or court knows or has reason to know that an Indian child is involved. (§ 224.3, subd. (d).) The circumstances that may provide reason to know the child is an Indian child include, without limitation, when a member of the child's extended family provides information suggesting the child is a member of a tribe or one or more of the child's parents, grandparents or great-grandparents are or were a member of a tribe. (§ 224.3, subd. (b)(1).)

2. The Juvenile Court Properly Concluded ICWA Did Not Apply

Mother argues Father's initial statement he may have Native American ancestry was sufficient to trigger ICWA's notice requirements, citing *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408 ("father's suggestion that Antoinette 'might' be an Indian child was enough to trigger notice in this case"). The Department contends that Father's general statement was too vague and speculative to require notice, citing *In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1516 ("a claim that a parent, and thus the child, 'may' have Native American heritage is insufficient to trigger ICWA notice requirements if the claim is not accompanied by other information that would reasonably suggest the minor has Indian ancestry") and *In re J.D.* (2010) 189 Cal.App.4th 118, 125 (paternal grandmother's statement that she had been told by her maternal grandmother that she had Native American ancestry, without any additional information, was too vague, attenuated and speculative to require ICWA notice).

Whether or not Father's initial statement, standing alone, would be sufficient to trigger ICWA's notice requirements, two weeks after his original statement Father was re-interviewed and told the dependency investigator he did not have any Native American ancestry. Father's interview and denial of Native American ancestry was reported to the

court on the Indian Child Inquiry Attachment, Judicial Council form ICWA-010(A), filed with the first amended petition on January 5, 2010.³ At the same time the Department stated ICWA did not apply in its jurisdiction/disposition report and repeated that assessment in all subsequently filed reports. Father appeared before the juvenile court on numerous occasions after the filing of the first amended petition with the no-Native-American-ancestry attachment and at no time indicated that statement was incorrect. The juvenile court correctly concluded no ICWA notice was required.

DISPOSITION

The juvenile court's order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.

³ Mother's opening brief does not mention Father's December 29, 2009 interview with the dependency investigator or his acknowledgement he has no Native American ancestry. The Department charitably suggests this omission was an oversight. Perhaps, but after this highly significant fact was emphasized in respondent's brief, Mother filed no reply brief and waived oral argument—a silence we necessarily interpret as conceding Father's retraction of his claim he may have Native American ancestry eliminated any need for ICWA notice.